

October 12, 1981

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10/19/81

Mr. Calvin K. Sudweeks
Executive Secretary
Utah Water Pollution Control Committee
150 West North West Temple Street
Salt Lake City, Utah 84110

Kennecott

SUBJECT: Water Discharge - Bingham Tunnel

Dear Mr. Sudweeks:

This is in response to your letter of September 30, 1981 in which you state that it is the dischargers responsibility to insure compliance with state water quality standards and request an implementation plan from Kennecott. Following are the facts about the Bingham Tunnel Discharge:

1. The water being discharged from the Bingham Tunnel is the subject of a Judgment entered in the United States District Court for the District of Utah, Central Division, Civil No. C-236-64 in case titled Herriman Irrigation Company vs. Kennecott Corporation, et al. A copy of that Judgment is attached to this letter for your information. The Judgment was entered on September 28, 1966 by A. Sherman Christensen, District Judge.
2. That Judgment refers to and incorporates by reference an agreement between Herriman Irrigation Company and United States Smelting, Refining and Mining Company, another defendant in that suit, dated November 14, 1952 relating to the same water discharged from the Bingham Tunnel. Under the terms of that agreement, the United States Smelting, Refining and Mining Company transferred the water to Herriman Irrigation Company and Herriman Irrigation Company agreed to take the same without any guarantee with respect to water quality and to indemnify and save the grantor harmless against any and all claims relating to water contamination or pollution as discharged from the Bingham Tunnel.
3. Although that agreement authorizes United States Smelting, Refining and Mining Company to terminate the agreement, and hence the use of that water, upon giving a one year written notice so to do, the court Judgment provides such a termination can be made only in the event that "the waters covered by said agreement are to be used by said defendant, or its successors in interest, for mining, milling or leaching purposes."
4. In December 1977, Kennecott acquired by purchase the properties of the United States Smelting, Refining and Mining Company including the underground workings and the Bingham Tunnel portal from which the Herriman Irrigation water is discharged. By that purchase, Kennecott became the successor in interest to United States Smelting, Refining and Mining Company under the terms of that agreement.

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It appears to us from the facts stated above, that your letter which you addressed to me should have been directed to the Herriman Irrigation Company.

If you have any questions concerning this matter after having examined the enclosures, please so advise.

Very truly yours,

KENNECOTT MINERALS COMPANY

Robert J. Heaney
Manager, Environmental Services

RJH:mf

Enclosure

cc: Fred Nelson, w/e
R. A. Malone, w/e ✓
E. C. Tingey, w/e
W. H. Jensen
W. D. Southard
T. R. Carlson
T. T. Pinder
S. D. Taylor
K. E. Taylor
T. Holzworth, w/e
C. Clark, w/e